

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Assessment and Collection  
of Regulatory Fees for  
Fiscal Year 1998

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)  
) MD Docket No. 98-36  
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To: The Commission

**REPLY COMMENTS  
ON THE NOTICE OF PROPOSED RULEMAKING**

Respectfully submitted,

**AMERICAN MOBILE TELECOMMUNICATIONS  
ASSOCIATION, INC.**

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May 4, 1998

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits these Reply Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") regarding the assessment and collection of Commercial Mobile Radio Service ("CMRS") Regulatory Fees for Fiscal Year ("FY") 1998.<sup>1</sup> AMTA agrees with those commenters who recommend that the Commission refine its Messaging Services fee and Mobile Services fee categories to insure that similar services pay similar regulatory fees. In support thereof the following is shown:

## **I. Introduction**

1. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz Specialized Mobile Radio ("SMR") service operators, licensees of wide-area SMR systems, interconnected Business service licensees and commercial licensees in the 220 MHz and 450-512 MHz bands.

2. The Association's members had been classified as private carriers prior to the 1993 amendments to the Communications Act.<sup>2</sup> Pursuant to the Budget Act, the regulatory distinction between private and common carriage was replaced by a CMRS versus Private Mobile Radio Service ("PMRS") analysis. Private carrier systems considered to meet the CMRS definition of providing interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public, were

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<sup>1</sup> 47 C.F.R. § 1.415(c); Notice of Proposed Rule Making, MD Docket No. 98-36, FCC 98-40, 13 FCC Rcd \_\_\_\_ (rel. Mar. 13, 1998) ("NPRM").

<sup>2</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392 ("Budget Act").

reclassified as CMRS licensees. However, the Budget Act also provided a three-year transition period pursuant to which private carrier licensees authorized prior to August 10, 1993 would continue to be regulated as private carriers, not CMRS, until August 10, 1996.<sup>3</sup> Only those qualified private carriers whose initial licenses in a service were issued after the August 10, 1993 deadline were treated as CMRS prior to expiration of the three-year transition period.

**II. The Commission Should Modify its CMRS Mobile Services Fee Category to Include Only Those Systems Authorized to Use at Least 42 Channels or 2.1 MHz of Spectrum.**

3. The NPRM acknowledges the difficulty licensees have experienced in distinguishing between the current CMRS Messaging Services fee category and CMRS Mobile Services fee category<sup>4</sup>, but proposes no modification of the classifications.

4. The 1997 R&O described the Commission's rationale behind the distinction:

We are persuaded from the comments that a revision of our CMRS fee categories to distinguish broadband mobile services from narrowband services would serve the public interest. Therefore, we will amend our fee schedule to replace our CMRS One-Way Paging fee category with a new CMRS Messaging Services fee category. The distinguishing characteristic between the CMRS Mobile Services fee category and the CMRS Messaging Services fee category will be the amount of bandwidth that we have authorized. Our bandwidth distinction is consistent with the fee schedule enacted by Congress and by our own prior fee schedules that assess fees based upon the quality of the channels provided to licensees.<sup>5</sup>

5. AMTA agrees that a spectrum distinction is a sound one. However, the Commission should refine the list of licensees which fall under each CMRS category. AMTA submits that the Commission should not include all interconnected SMR systems in the CMRS

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<sup>3</sup> 47 U.S.C. § 332(c)(6).

<sup>4</sup> NPRM at ¶ 28.

<sup>5</sup> Report and Order, MD Docket No. 96-186, 12 FCC Rcd \_\_\_\_ ¶ 60 (1997)(emphasis added)("1997 R&O").

Mobile Services fee category in light of the reasoning in the 1997 R&O.<sup>6</sup> Instead, consistent with the proposal made by BellSouth Wireless Data, L.P. ("BellSouth WD") in its Comments in this proceeding, the Commission should include in the CMRS Mobile Services category only those systems authorized to use at least 42 channels or 2.1 MHz of spectrum.<sup>7</sup>

6. The broadband Mobile Service Category includes cellular licensees which each have been assigned 25 MHz of spectrum and Personal Communication Service ("PCS") licensees which have been assigned licenses each comprising 10 MHz or 30 MHz of spectrum. The bandwidth of individual channels within this authorized spectrum will be determined by the technology they elect to deploy as the FCC increasingly recognizes the public interest in allowing licensees enhanced technical flexibility.

7. By contrast, the traditional SMR licensee was granted only five 25 kHz channels at a time<sup>8</sup> for a total of 250 kHz of spectrum. Systems were permitted to grow, that is to add frequencies, if they could document an existing customer need for additional capacity and if additional channels were available.<sup>9</sup> Today, the typical SMR system operating under a

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<sup>6</sup> AMTA notes that it has asked the FCC to reconsider the portion of its 1997 R&O pertaining to the category of units on which SMR licensees' regulatory fees will be based. AMTA requested that only interconnected units be considered in determining the applicable CMRS regulatory fee. AMTA Petition for Partial Reconsideration, MD Docket No. 96-186 (filed Aug. 11, 1997). AMTA's Petition is still pending.

<sup>7</sup> Comments of BellSouth Wireless Data, L.P., MD Docket No. 98-36 (filed Apr. 22, 1993).

<sup>8</sup> Former 47 C.F.R. § 90.621(a)(iv). This rule section was deleted when the Commission adopted the overlay Economic Area ("EA") licensing scheme for SMRs. See, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, PR Docket No. 93-144, 11 FCC Rcd 1463 (1995).

<sup>9</sup> Former 47 C.F.R. § 90.631(c).

particular call sign at a specific geographic location is not likely to be authorized for more than ten or fifteen channels, for a total bandwidth of 500 kHz to 750 kHz. In most instances, these channels are not contiguous, restricting the licensee's ability to offer any variety of services.

8. Therefore, to the extent the FCC bases its regulatory classification on amount of spectrum, AMTA submits that the typical SMR licensee is much closer to typical narrowband CMRS Messaging Service licensee than to the broadband CMRS Mobile Services fee licensees. Accordingly, the FCC should reconsider its placement of all SMR licensees under the rubrics of CMRS Mobile Services. Instead, the Commission should include those SMR systems, and any licensee authorized less than 2.1 MHz of spectrum regardless of the service offered, in the Messaging Service category.

### **III. The Adopted Regulatory Fee Schedule Is Harmful to Small Businesses.**

9. As detailed by the Personal Communications Industry Association in its Comments, the CMRS Mobile Services and CMRS Messsaging Services fees have increased dramatically over the past few years, while inter-exchange carrier and local exchange carrier fees have only risen moderately, and decreased from FY 1997.<sup>10</sup> AMTA urges the Commission to heed PCIA's Comments and recognize the negative impact the escalation in CMRS regulatory fees will have on competition in the telecommunications marketplace. The spiraling CMRS Mobile and CMRS Messaging Services regulatory fees will inhibit the ability of CMRS providers to lower their consumer prices enough to realistically compete with wireline providers.

10. The impact will be most significant on small businesses. As noted in the

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<sup>10</sup> Personal Communications Industry Association, Comments, MD Docket No. 98-36, 15-18 (filed Apr. 22, 1998).

Comments submitted by Small Business in Telecommunications ("SBT"), as a percentage of revenue, the cost burden of complying with the Commission's regulations falls more heavily on the small carrier than the large.<sup>11</sup> Many of these businesses offer low-cost services such as two-way dispatch communications typically provided at a flat fee of less than \$20.00 per month per mobile. The spiraling regulatory fees pose a heavy relative burden on these carriers. Accordingly, in establishing its schedule of regulatory fees, the Commission should consider providing relief in the form of reduced regulatory fees for small businesses.

**IV. The Commission Should Issue the Refund Procedure Public Notice for Those Converted CMRS Licensees that Have Pre-Paid Regulatory Fees.**

11. Licensees in services for which the annual regulatory fee is considered "small" by the FCC submit the entire fee due for the full term of their licenses when filing their initial, renewal or reinstatement applications.<sup>12</sup> Such licensees pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested licenses.

12. As the Commission recognized in the 1996 R&O, all grandfathered PMRS licensees, as well as other Private Wireless Radio Service licensees, prepaid their regulatory fees pursuant to that requirement.<sup>13</sup> In the 1997 R&O, the Commission affirmed that licensees that had converted from PMRS to CMRS and had paid fees in advance for a period of years could file a request for refund, pro-rated for the number of remaining years in the initial PMRS license

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<sup>11</sup> Small Business in Telecommunications, Comments, MD Docket No. 98-36, 8-10 (filed Apr. 17, 1998).

<sup>12</sup> See, 47 U.S.C. § 159(f)(1).

<sup>13</sup> See, Report and Order, MD Docket No. 96-84, 61 FR 36,629 ¶ 21 (1996)("1996 R&O").

term.<sup>14</sup> According to the Commission, detailed refund procedures would be issued separately by Public Notice.<sup>15</sup> AMTA notes that the Public Notice has not been issued and that the NPRM does not mention it. AMTA urges the Commission to issue the Public Notice expeditiously.

## **V. Conclusion**

AMTA recommends that the FCC proceed expeditiously to finalize this proceeding, consistent with the recommendations detailed herein.

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<sup>14</sup> 1997 R&O at ¶ 64.

<sup>15</sup> Id.

## CERTIFICATE OF SERVICE

I, Jennifer McCord, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this May 4th, 1998 caused to be hand carried a copy of the foregoing Reply Comments to the following:

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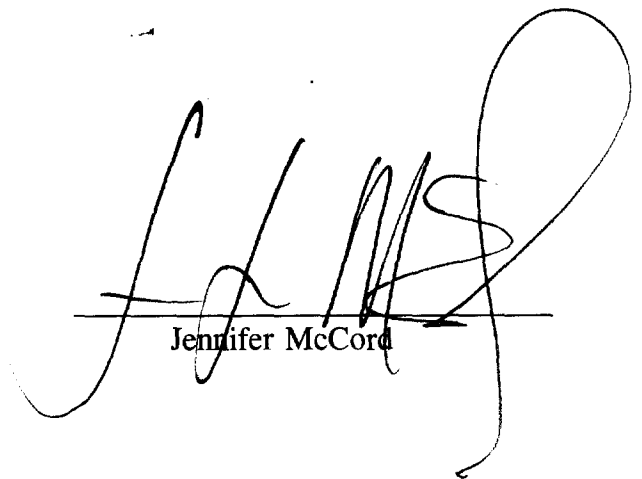


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